IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 23-11-2007

CORAM

THE HONOURABLE MR.JUSTICE ELIPE DHARMA RAO

AND

THE HONOURABLE MR.JUSTICE S.PALANIVELU

WRIT APPEAL No.2399 OF 2003

1.Tamil Nadu State Transport Corporation
(Kumbakonam Dn-II) Ltd.,
Periyamilaguparai,
Tiruchirapalli-620 001,
rep.by its Managing Director.

2.The General Manager (Operations),
Tamil Nadu State Transport Corporation Ltd.,
(Kumbakonam Division-II),
Tiruchirapalli-1. ... Appellants

-vs-

P.Karuppusamy ... Respondent

Appeal under Clause 15 of the Letters Patent. Writ Appeal against the order of this Court dated 21.1.2003 in WP.No.5354 of 2000. This petition presented to this Court under Article 226 of constitution of India to issue a writ of certiorarified mandamus calling for the records relating to the impugned order of the second respondent dated 19.12.98 bearing Ref.TNSTC/K.D2/D2/2417/98 and the order of the first respondent dated 23.10.1999 bearing Ref.TNSTC/K.D2/SM/146160/99 quash the same and consequently direct the respondent to reinstate the petitioner into service with back wages and all consequential monetary service and other benefits.

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For appellants : Mr.S.Ramasamy,
Addl.Advocate General,
for Mr.V.R.Kamalanathan,
assisted by Mr.K.Balakrishnan,
Addl.Govt.Pleader.

For respondent : Mr.N.G.R.Prasad,
for M/s.Sai,Bharath & Ilan.

J U D G M E N T

S.PALANIVELU,J.

This appeal is filed against the order, dated 21.01.2003, made in W.P.No.5354 of 2000, whereby the order of dismissal passed by the second appellant, dated 19.12.1998, which was confirmed by the first appellant in appeal, dated 23.10.1999, was set aside, with a direction to reinstate the respondent/writ petitioner, with all consequential benefits.

2. Respondent, who filed the Writ Petition, was serving as a Driver in the second appellant Corporation. While he was driving a bus, bearing registration No.T.N.45/N/1045 along Karur-Erode main road, an accident took place near Nathamedu Junction, by a head-on collision of the bus with a tipper lorry, bearing registration No.T.N.33/Y-5006. In the gruesome accident, ten passengers, who were travelling in the bus, died and seven others were injured and both the vehicles got damaged. With regard to the accident, the Conductor of the bus, by name Murugesan, lodged a complaint with Karur Police Station in Crime No.348 of 1998, in which he stated that while the bus was being driven by its driver on the left side of the road, the tipper lorry came from opposite direction and dashed against the bus, causing the accident. A case was registered under Sections 279, 338 and 304-A IPC, against the driver of the tipper lorry, by name Ravi. The said case was taken on file in C.C.No.643 of 1999 on the file of Judicial Magistrate Court No.I, Karur, and the said Court, on 05.08.2003, convicted the accused Ravi under the above said sections with rigorous imprisonment for a specified period, besides slapping a fine on him. There was no appeal from the said judgment.

3. In the meanwhile, the second appellant initiated disciplinary proceedings against the respondent, by issuing a charge memo, containing four charges. The gravamen of the charge was that the driver, by his rash and negligent driving, drove the bus to the central part of the road and dashed the tipper lorry head-on, thereby causing the fatal accident, resulting in the death of ten passengers and injuring seven others and hence, he was also liable to be punished.

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4. The respondent submitted an explanation, refuting the charges. Since the management was not satisfied with the said explanation, a domestic enquiry by a retired District Judge was ordered and conducted, who, on 26.09.1998, gave a report, holding that the drivers of both the vehicles were responsible for the accident. He also rendered a finding that the charges framed against the respondent/workman were also proved. Based upon the said finding, the second appellant passed an order of dismissal of the respondent from service on 19.12.1998, whereupon, the respondent carried the matter in appeal before the first respondent, which appeal was dismissed, confirming the order of dismissal. Hence, the respondent filed the Writ Petition, praying for a writ of certiorarified mandamus, to quash the orders impugned and for reinstatement with all attendant benefits.

5. The learned single Judge, after hearing both sides, allowed the Writ Petition, as prayed for, with an observation that since the Motor Accident Claims Tribunal, Karur, came to the conclusion that the accident took place only due to the rash and negligent driving of the lorry, the management could not take a different view, for the purpose of terminating the respondent from service, as the charge levelled against the writ petitioner was only on the basis of the accident. Aggrieved over the said finding, the management has preferred this appeal before this Court.

6. Though the Enquiry Officer has found the respondent guilty of the charges, the other attending circumstances ought to be looked into. The legal heirs of the deceased persons and the injured had chosen to file claim petitions for compensation before three various Motor Accident Claims Tribunals. A batch of claim petitions were filed before the Motor Accident Claims Tribunal (Principal District Court), Karur, where a common award was passed on 19.10.2000. In the said proceedings, driver, owner and insurer of the tipper lorry were on the array as respondents, besides the present management. The management filed counters to the claim petitions before the said Tribunal with categorical pleadings, which go to the effect that the tipper lorry was driven by its driver rashly and negligently and it dashed against the bus, while it was proceeding from west to east, on the left side of the road near Athur-Nathamedu Pirivu.

7. After scrutinising the oral evidence and the materials available on record, the Tribunal reached a conclusion that the lorry, coming in a rash and negligent manner, dashed against the bus and that the accident occurred only due to the negligence of the driver of the lorry. Another point was also raised in the above said proceedings with regard to the argument of the learned counsel for the management, which being that the claim petitions were bad for joinder of unnecessary party, namely, Tamil Nadu State Transport Corporation, and a positive finding was rendered by the Tribunal that the Corporation was not a necessary party to the said petitions.

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8. Two other claim petitions came to be filed before MACT, Erode, for compensation, arraying driver, owner, insurer of the tipper lorry, the present respondent and the Transport Corporation as respondents 1 to 5 respectively. In the said proceedings also, the Corporation had raised a defence that the driver of the lorry drove the vehicle with high speed from opposite direction, thereby the vehicle swerved to the northern side of the road and dashed against the bus; as such, the driver of the lorry was squarely responsible for the accident and that the present respondent was not, in any way, responsible for the accident, as he drove the bus at normal speed.

9. After considering the materials on record, the said Tribunal arrived at a decision that both the drivers were responsible for the accident to the extent of 40 and 60% respectively.

10. Yet another claim petition in M.C.O.P.No.202 of 1999 was filed by the claimant before the I Additional District Judge-cum-Chief Judicial Magistrate, Erode, in which also, the Corporation had taken identical defence and the said Tribunal found that drivers of both the vehicles had to contribute for the accident at 50% each. As against the said award, the Corporation preferred an appeal before this Court in C.M.A.No.1172 of 2003, wherein a copy of the grounds of appeal was produced by the learned counsel for the Corporation, in which it was mentioned that the Tribunal failed to note that the accident took place due to rash and negligent driving of the lorry by its driver; no eye witness much less a police officer was examined to prove the negligence on the part of driver of the management and that the Tribunal failed to consider the criminal case against the driver of the lorry and also the evidence of the driver and the conductor of the Corporation.

11. Pointing out the above said features, learned counsel for the respondent would vehemently contend that the appellant Corporation, having taken a categorical and definite defence in the claim petition proceedings, could not take a different view of causing an extreme penalty of dismissal from service on the respondent.

12. Since the decision taken by the Corporation to dismiss the respondent from service is oxymoron in nature, it is to be seen, whether such an inconsistent view could be taken ?

13. The points found pitted against the Corporation are : (i) upon the police investigation as to the accident, driver of the bus, namely, the respondent was not arraigned as an accused and (ii) a uniform stand was taken by the Corporation before various Tribunals, stating that the respondent was not responsible for the accident.

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14. Mr.S.Ramasamy, learned Additional Advocate General, appearing for the appellants, laboured hard to convince this Court, stating that though the Corporation had raised a defence before the Tribunals safeguarding its driver, it would not be a bar for it to proceed against him in departmental proceedings and finally to dismiss him from service. He further stated that the application of principles of res ipsa loquitor is essential in this case, which means 'speaks for itself' or 'tells its own story', quoting the decision of Supreme Court in Cholan Roadways Ltd. v. Thirugnanasambandam, AIR 2005 SUPREME COURT 570. He would further proceed to say that there are cases, in which the accident speaks for itself and it is sufficient for the plaintiff to prove the accident and nothing more and that it will then be for the defendant to establish that the accident has occurred due to some other cause than his own negligence. He also placed reliance upon a Division Bench decision of this Court in Management of Thiruvalluvar Transport Corporation v. S.Anthonysamy, 2005 (5) Service Law Reporter 714, in which, referring to another decision of this Court, it was held as follows :

> "8.It is well settled that on the same charges when there is a criminal proceeding as well as a domestic enquiry, merely because the workman is found innocent in the criminal case, it does not mean that he cannot be found guilty in the departmental domestic enquiry vide Thenmozhi v. The Chairman and Managing Director, Neyveli Lignite Corporation in W.A.No.202 and 203 dated 8.2.2005."

15. In the above said reported decision, a ruling of the Apex Court was referred and the principles therein were followed. The relevant portion of the Supreme Court judgment goes thus :

> "Secretary, Ministry of Home Affairs and another v. Tahir Ali Khan Tyagi, 2002 (1) JT (Supp) (SC) 1520 :
>
> Departmental proceeding and criminal proceeding can run simultaneously and departmental proceeding can also be initiated even after acquittal in a criminal proceeding particularly when the standard of proof in a criminal proceeding is completely different from the standard of proof that is required to prove the delinquency of a government servant in a departmental proceeding, the former being one of proof beyond reasonable doubt, whereas the latter being one of preponderance of probability."

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16. In the aforesaid judgment of this Court, the Division Bench further held that it was evident that the Corporation had lost confidence in the respondent due to his gross negligence because of which several passengers died and several others injured and hence it was not a fit case for ordering reinstatement. But, the facts available in the case on hand are distinguishable.

17. Learned Additional Advocate General also sought support from an earlier decision of the Supreme Court in State of Andhra Pradesh v. S.Sree Rama Rao, AIR 1963 Supreme Court, in which it was held as under :

> "In considering whether a public officer is guilty of the misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the court, does not apply and even if that rule is not applied, the High Court in a petition under Art.226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not constituted in a proceeding under Art.226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant; it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated."

18. But, in a subsequent decision of the Supreme Court, it was held, if the finding of the enquiry officer was based on no evidence or was perverse, judicial review by the Court would be attracted. The principle, as laid down by the Supreme Court in Coimbatore District Central Cooperative Bank v. Coimbatore District Central Cooperative Bank Employees Association and another, 2007 (4) Supreme Court Cases 669, is thus :

> "29. Normally, when disciplinary proceedings have been initiated and finding of fact has been recorded in such inquiry, cannot be interfered with unless such finding is based on "no evidence" or is perverse, or is such that no reasonable man in the circumstances of the case would have reached such finding...."

19. The Motor Accident Claims Tribunal has fully absolved the respondent of the liability. The other two Tribunals, though have not pointed out the guilt of the respondent entirely, they indicated the

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responsibility of the respondent to a specified extent, which will not fetter this Court to hold that the finding of the Enquiry Officer is perverse and judicial review is indispensable.

20. Learned counsel for the respondent would draw attention of this Court to a decision of the Supreme Court in G.M.Tank v. State of Gujarat and another, 2006 (3) CTC 494 : 2006 (5) SCALE 582, in which it was held that even though the degree of proof before the domestic enquiry officer and the criminal court is with a chain of difference, still, the honourable acquittal by the criminal court has to be taken note of. In the said decision, an earlier decision in PAUL ANTHONY vs. BHARAT GOLD MINES LTD. AND ANOTHER [AIR 1999 SC 1416: 1999 (3) SCC 679] was referred. The relevant portions in both the judgments have been culled out as below :

> "25. It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand. In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony's case (supra) will apply. We, therefore, hold that the Appeal filed by the appellant deserves to be allowed...."

21. Learned Additional Advocate General also placed much reliance upon G.M.Tank's case (supra), for a proposition of law that merely because the accused is acquitted, the power of the authority concerned to continue the departmental enquiry is not taken away nor is its discretion in any way fettered. In the said ruling, it is further observed that the two proceedings criminal and departmental are entirely different; they operate in different fields and have different objectives and while the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service Rules.

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22. As far as the facts of the case on hand are concerned, no criminal proceedings are initiated against the respondent and, hence, whether the hands of the Corporation are tied, is not the question before this Court.

23. Learned counsel for the respondent also garnered support from a decision of the Apex Court in Kali Prasad v. Dy.Director of Consolidation, AIR 2000 SUPREME COURT 3722, for a legal proposition that the finding recorded by the civil court on the question of jurisdictional fact is binding on the parties to the suit. He further placed reliance upon a decision of the Supreme Court in Venkatappa alias Moode v. Abdul Jabbar, 2006 (9) Supreme Court Cases 235, in which it was decided that the parties are bound by the pleadings in the statements filed by them and they cannot be permitted to put forth a new case.

24. The principles laid down in the aforestated rulings are squarely applicable to the facts of the present case. The appellant Corporation, having taken a plea that the driver of the bus was not responsible for the accident, could not turn around to say that he was responsible for the accident. As such, it is very much bound by the pleadings raised by it before the Tribunals and this Court. The law is well settled as to the aspect that the standard of proof in both the proceedings before the criminal court and the domestic enquiry officer are entirely different. However, since the Corporation has consciously raised the contention in favour of the bus driver before the judicial fora, it is precluded from proceeding against him in departmental proceedings. Though the extent of proof is sufficient to the commission of delinquency in the matter of departmental proceedings, the management could not lay its hands on the workman, detrimental to his interest, after defending him before various judicial fora and accepting the findings of the Motor Accident Claims Tribunal, Karur. Further, in the dismissal order, dated 09.12.1998, it is mentioned that even though a scrutiny of the service records would show that the respondent was not at all penalised at any point of time, since he caused a fatal accident, it was proposed to dismiss him from service, which shows that the past records of the respondent were also clean.

25. The learned single Judge, on the factual position, has rendered a finding that the management cannot take a different view, which is quite proper. In our view also, the decision of the management in dismissing the respondent from service cannot be sustained, for the reasons assigned above. In so far as the other consequential reliefs are concerned, considering the period during which the relationship of employer and employee got severed between the parties for a considerably long period, we feel, interest of justice will be met, in ordering payment of 50% back wages with all other attendant benefits.

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Hence, this Writ Appeal is allowed in part, modifying the order of the learned single Judge with regard to back wages as aforementioned. No costs.

dixit/Rao

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,

1. The Managing Director.
   Tamil Nadu State Transport Corporation
   (Kumbakonam Dn-II) Ltd.,
   Periyamilaguparai,
   Tiruchirapalli-620 001.

2.The General Manager (Operations),
   Tamil Nadu State Transport Corporation Ltd.,
   (Kumbakonam Division-II),
   Tiruchirapalli-1.

+1 cc to M/s.V.R.Kamalanathan, Advocate Sr.No.69632.

+1 cc to Mr.Sai Bharath Advocate Sr.No.69441.

AKR(CO)
dcp/30.11

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